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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91214578
Party	Plaintiff LeMans Corporation
Correspondence Address	TARA M VOLD VOLD & WILLIAMSON PLLC 8251 GREENSBORO DRIVE, SUITE 340 MCLEAN, VA 22102 UNITED STATES trademark@vwiplaw.com
Submission	Motion to Compel Discovery
Filer's Name	J. Paul Williamson
Filer's e-mail	trademark@vwiplaw.com
Signature	/jpw/
Date	12/31/2014
Attachments	Supplemental Filing In Continued Support of Motion To Compel And Continued Request For Relief.pdf(1087504 bytes ) Supplemental Filing - Attachment_1.pdf(1690865 bytes ) Supplemental Filing - Attachment_2.pdf(2733316 bytes ) Supplemental Filing - Attachment_3.pdf(2524863 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LeMans Corporation,	)	
	)	Opposition No. 91214578
Opposer,	)	
	)	
v.	)	Mark: THORO
	)	Serial No. 85/956,925
Lemar Xavier Lewis,	)	
	)	
Applicant.	)	

**SUPPLEMENTAL FILING IN CONTINUED SUPPORT OF MOTION TO COMPEL  
AND CONTINUED REQUEST FOR RELIEF**

Pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer LeMans Corporation (“Opposer”), on December 17, 2014, moved the Board for an order compelling Applicant Lemar Xavier Lewis (“Applicant”) to respond to Opposer’s First Set of Interrogatories and Opposer’s First Requests for the Production of Documents (hereafter the “Discovery Requests”) without objections.

On December 20, 2014, Opposer’s counsel received “Applicant’s Response to Opposer’s First Set of Interrogatories” and “Applicant’s Response to Opposer’s First Set of Request for Production of Documents,” copies of which are submitted herewith as Attachments 1 and 2. On December 30, 2014, Opposer’s counsel received Applicant’s purported “Document Production,” all 17 pages of which are submitted herewith as Attachment 3. As these discovery responses are untimely and do not represent an appropriate and legitimate effort at responses on behalf of the Applicant, Opposer continues with its Motion to Compel (“Motion”), including its request for remedies.

As delineated in great detail in Opposer's Motion, Applicant's repeated delays and unresponsive filings have caused both Opposer and this Board significant effort and resources to obtain compliance by Applicant with his obligations in this proceeding. Applicant's failure to comply and respect the rules of this tribunal are well documented and include the following:

- (i) a continuing failure to keep an updated address of record with the Office (which the Board was forced to obtain orally during the parties' October 17, 2014 conference call (and as reflected in the Board's October 17, 2014 Order -- but which remains unchanged for all of Applicant's trademark filings with the Office, namely App. No. 85/956,925; App 86/367,828, and Reg. No. 3,206,498);
- (ii) a failure to serve copies of submissions to all parties (which the Board excused and *sua sponte* handled for Applicant "to expedite matters" in its July 21, 2014 Order);
- (iii) a failure to timely attend the October 17, 2014 conference call scheduled with the explicit agreement of the parties by the Interlocutory Attorney (requiring the parties to reinstitute the call later that morning);
- (iv) a failure to timely serve Initial Disclosures (which the Board excused in its October 17<sup>th</sup> Order and provided additional time to Applicant);
- (v) a failure to timely respond to Opposer's Discovery Requests -- despite Applicant's acknowledgement that he had received these Discovery Requests nearly six months earlier (for which the Board also excused Applicant in the October 17, 2014 Order and provided additional time);

- (vi) a subsequent failure of Applicant to respond timely to the Discovery Requests by the deadline set by the Board in its October 17, 2014 Order and as then further extended with the consent of Opposer to December 1, 2014;
- (vii) a subsequent further extension request by Applicant's counsel was made on December 1, 2014 to move the deadline to December 8, 2014 "due to the holiday week and some other issues regarding [Applicant's] attentiveness to providing the responses" (Opposer did not agree to give consent to this request) ; and
- (viii) a subsequent failure of Applicant to provide any responsive communication to Opposer's December 12, 2014 communication indicating that a Motion to Compel would be filed if substantively complete responses to the Discovery Requests were not received by the close of business of December 15, 2014 – thus requiring Opposer to file its Motion with the Board on December 17, 2014.

In addition to these activities, the substantively meaningless and "form" responses submitted by Applicant on December 20, 2014 provided Opposer with essentially no responsive information. By way of summary:

- (i) Document Requests: Applicant provided an identical response to each and every one of Opposer's Document Requests strongly suggesting *pro forma* responses were prepared without any apparent effort on or examination of the contents of the requests and served simply to avoid the issuance of the Show Cause Order.
- (ii) Interrogatories: Applicant provided perfunctory and, in many cases, incomplete responses which reflected no meaningful attempt to provide responsive information.



- a. Applicant does not identify himself as a person with knowledge of the adoption or selection of the subject mark [it is his alleged mark], the uses and intended uses of the mark or on sales or advertising associated with the mark. See Interrogatory Response No. 2.
  - b. Applicant does not identify any person as having more than a clerical role in the answering of the interrogatories or responses to document requests. See Interrogatory Response No. 9.
  - c. Applicant provides no substantive response to interrogatories requesting information (including the titles and dates) on the advertising activities surrounding the subject mark. See Applicant's Response to Interrogatory No. 3 ("Applicant identifies the following: television advertisement on ESPN, thorosportwear.com and thorowear.com.")<sup>1</sup>
  - d. Applicant provides no substantive response to interrogatories requesting information on use of the subject mark. See Applicant's identical responses for Interrogatories No. 6-8 ("Applicant offered produces for sale to the general public via sales events and retailers").
- (iii) Document Production: Despite claiming no periods of non-use of the THORO mark since the claim of bona fide use in commerce commencing on September 5, 2001 (see Applicant's Response to Interrogatory No. 9), Applicant's response to Opposer's requests for evidence supporting use of the THORO mark amounted to a total of 17 pages consisting essentially of pictures (mostly undated) of individuals wearing THORO branded t-shirts and a couple of unsubstantiated mock ups of graphic design

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<sup>1</sup> Applicant notes that neither the thorosportwear.com nor thorowear.com domain names resolve to THORO content.

pieces. Further, these documents were not produced as kept in the usual course of business, nor organized and labelled to correspond to the categories in the requests.

As noted in Opposer's Motion, the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") provides that a party which fails to respond to discovery interrogatories or document requests during the time allowed therefor, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to discovery on the merits. *See* TBMP §§ 403.03 and 407.01, *citing* *Bison Corp. v. Perfecta Chemie B.V.*, 4 U.S.P.Q.2d 1718 (TTAB 1987); *Luehrmann v. Kwik Kopy Corp.*, 2 U.S.P.Q.2d 1303 (TTAB 1987).

Opposer further notes that Applicant's untimely discovery responses also violate the Board's October 17, 2014 Order which set a discovery response deadline of November 14, 2014 (as extended with the consent of Opposer to December 1, 2014). In these circumstances, Section 527.01(a) of the TBMP provides that the following sanctions, inter alia, may be entered by the Board for failure to comply with an order relating to discovery: striking all or part of the pleadings of the disobedient party; refusing to allow the disobedient party to support or oppose designated claims or defenses; prohibiting the disobedient party from introducing designated matters in evidence; and entering judgment against the disobedient party.

The untimely discovery responses served December 20, 2014, and the purported responsive Document Production (of 17 pages) served on December 30, 2014, do not reflect a legitimate attempt to respond to Opposer's Discovery Requests and, as admitted by Applicant's own attorney, were untimely, in part, as a result of his client's [lack of] "attentiveness."

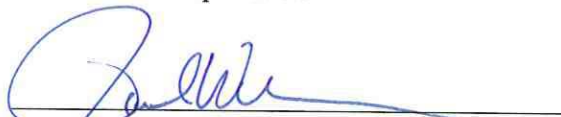
Accordingly, Opposer respectfully requests the Board to use its discretion to order the most severe sanctions permitted under the rules.

Respectfully submitted,

LeMans Corporation

Date: December 31, 2014

By:



Tara M. Vold

J. Paul Williamson

VOLD & WILLIAMSON PLLC

8251 Greensboro Drive, Suite 340

McLean, VA 22012

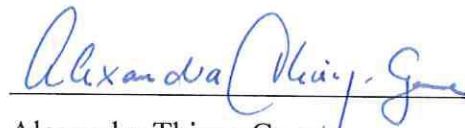
571-395-4630

*Attorneys for the Opposer*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing OPPOSER'S SUPPLEMENTAL FILING IN CONTINUED SUPPORT OF MOTION TO COMPEL AND CONTINUED REQUEST FOR RELIEF was served via email on this 31st day of December, 2014 to Counsel for Applicant at the following address of record:

Keesonga Gore  
kjg@minottgore.com  
Minott Gore, P.A.  
201 S. Biscayne Blvd.  
Suite 2800  
Miami, FL 33131

  
Alexandra Thiery-Gore

## Attachment 1



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

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<b>LeMans Corporation,</b>	:	
<b>Opposer,</b>	:	
<b>v.</b>	:	<b>Opposition No. 91214578</b>
	:	
<b>LaMar Xavier Lewis,</b>	:	
<b>Applicant.</b>	:	

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**APPLICANT'S RESPONSE TO  
OPPOSER'S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 33 of the Federal Rules of Civil Procedure, Applicant LeMar Xavier Lewis, hereby responds to Opposer's First Set of Interrogatories subject to the General Objections set forth below.

**GENERAL OBJECTIONS**

1. Applicant objects to these interrogatories to the extent they seek information which is protected from disclosure under the attorney-client privilege or work product immunity, or any other privilege, protection, or immunity applicable under governing law.
2. Applicant objects to the Opposer's "Definitions" and "Instructions" to the extent they purport to impose discovery obligations that differ from or exceed the discovery obligations imposed by the Trademark Rules of Practice and the Federal Rules of Civil Procedure.
3. Applicant objects to these interrogatories to the extent they seek the production of "all" and "any" documents or the like to the extent that such requests are unduly broad and burdensome. Unless otherwise indicated, Applicant will produce relevant documents after a comprehensive search of Applicant's business records.
4. Applicant objects to these interrogatories to the extent they seek information which is neither relevant to the issues raised in this opposition nor reasonably calculated to lead to the discovery of admissible evidence.
5. Applicant objects to these interrogatories to the extent they seek information in the custody of third-parties over whom Applicant does not exercise control.

6. Applicant objects to these interrogatories to the extent Opposer's requests seek information which Applicant considers to be confidential or proprietary, including trade secrets or other confidential research, development or commercial terms, responses will be provided as warranted under terms of the Protective Order in this action.
7. Applicant objects to the identification of documents that Applicant will be producing pursuant to Opposer's First Set of Requests for the Production of Documents and Things on the grounds that such identification would be unduly burdensome and duplicative.
8. Applicant objects to these interrogatories to the extent they seek to require Applicant to produce entire documents when portions are not responsive or are otherwise not subject to production. Applicant will produce entire documents where entire documents are responsive, and reserves the right to exercise or redact documents where only portions are responsive.
9. Applicant responds to each of these of these interrogatories based upon information available as of the date hereof and reserve the right to supplement and amend their responses.

## RESPONSES TO INTERROGATORIES

Subject to the foregoing general objections, Applicant responds as follows:

### **INTERROGATORY NO. 1:**

Identify with particularity each product and/or service promoted or sold, or proposed to be promoted or sold by Applicant (see definitions and instructions) under the designation "THORO" (see definitions and instructions) at any time in the United States.

### **RESPONSE:**

Sportswear, bags, headwear, shirts, shorts, eyewear, sports equipment, body care preparations, jewelry, and fragrances.

### **INTERROGATORY NO. 2:**

Identify the person or persons in the employ of or associated in any manner with Applicant most knowledgeable with respect to the following:

Selection and adoption of the designation "THORO" for the products set forth in application Serial No. 85/956,925;

The current uses and intended uses of the designation "THORO" (including any composite or design presentations); and

Any sales and advertising, or intended sales and advertising of any of the products identified in application Serial No. 85/956,925 or any services offered or to be offered under the designation "THORO" (including any composite or design terms incorporating the designation "THORO").

**RESPONSE:**

Diondre Lewis and Jason Alphonso.

**INTERROGATORY NO. 3:**

Identify each publication and broadcast advertisement (e.g., radio, television, email, web site) authorized by or on behalf of Applicant in which any of the goods and/or services identified in application Serial No. 85/965,925 have been offered under the designation "THORO" (including any composite or stylized terms incorporating the designation "THORO") by identifying the following:

The title(s) and date(s) of each publication in which any advertisement appeared or is scheduled to appear; and

Each actual or scheduled broadcast by date(s), and station(s) or web site(s), and whether the broadcast was or will be on radio, television or computer.

**RESPONSE:**

Applicant objects to this interrogatory on the grounds that it is vague, overbroad, unduly burdensome, oppressive and ambiguous, and not calculated to lead to the discovery of admissible evidence.

Without waiving the objections and to the extent this interrogatory is answerable, Applicant identifies the following: television advertisement on ESPN, [thorosportswear.com](http://thorosportswear.com), and [thorowear.com](http://thorowear.com).



**INTERROGATORY NO. 4:**

Identify any instances of actual confusion, mistake or deception known to Applicant as to the source or origin, a sponsorship or an association as between its use of "THORO" (including any composite or stylized terms incorporating the designation "THORO") for any goods and/or services and Opposer's use of THOR, by identifying for each such instance the following:

- The date of such instance and the person or entity confused;
- The nature of the confusion; and
- The person in Applicant's organization to whom the instance was reported or to whose attention the instance was first brought.

**RESPONSE:**

None.

**INTERROGATORY NO. 5:**

Identify (see definitions and instructions) all third persons using, applying for or having registered any mark or designation incorporating the term "THORO," "THOR" or a phonetic equivalent to "THOR" that Applicant shall rely on in support of any claimed affirmative defenses in Applicant's Answer. On such uses, applications or registrations and state:

- (a) the mark/designation being used and/or the mark applied for or registered;
- (b) the goods and/or services offered or proposed to be offered under the mark/designation; and
- (c) when Applicant first became aware of such use, application or registration.

**RESPONSE:**

- (a) The following U.S. Federal Trademark Registrations: 3785155, 4016485, 4248215, 4296195, 4378330, 4478700, 4511398, 4577395, 4467955, 4534182, and 4534181.
- (b) Applicant refers to the record provided by the USPTO.
- (c) After Opposer filed this present opposition proceeding.

**INTERROGATORY NO. 6:**



Identify the activity which provided the basis for the claim of bona fide use of the THORO mark in commerce on September 5, 2001 for the products identified in Application Serial No. 85/956,925, specifically including the nature of the use and the point of sale for any alleged products.

**RESPONSE:**

Applicant offered products for sale to the general public via sales events and retailers.

**INTERROGATORY NO. 7:**

Identify the activity which provided the basis for the claim of bona fide continuing use of the THORO mark in commerce on June 11, 2013 for the products identified in Application Serial No. 85/956,925, specifically including the nature of the use and the point of sale for any alleged products.

**RESPONSE:**

Applicant offered products for sale to the general public via sales events and retailers.

**INTERROGATORY NO. 8:**

Identify the activity which provided the basis for the claim of bona fide continuing use of the THORO mark in commerce on October 21, 2012 as reflected in Registration No. 3,206,498, specifically including the nature of the use and the point of sale for any alleged products.

**RESPONSE:**

Applicant offered products for sale to the general public via sales events and retailers.

**INTERROGATORY NO. 9:**

Identify any and all periods of non-use of the THORO mark since the claim of bona fide use in commerce on September 5, 2001.

**RESPONSE:**

None.

**INTERROGATORY NO. 10:**

Identify the reason that a Section 15 Affidavit of Incontestability was not filed with the Section 8 Continued Use Affidavit on October 21, 2012 in connection with Registration No. 3,206,498.

**RESPONSE:**

Applicant chose not to complete the Section 15 filing.

**INTERROGATORY NO. 11:**

Describe when and by what means Applicant first became aware of Opposer's THOR products and/or services. Further, identify the person or persons who first became aware of Opposer's THOR products and/or services.

**RESPONSE:**

When Opposer filed this present Notice of Opposition.

**INTERROGATORY NO. 12:**

Describe with particularity all of the channels of trade in or through which Applicant markets and sells, or intends to market and sell, under the designation "THORO" any of the products and/or services offered by Applicant.

**RESPONSE:**

Applicant objects to this interrogatory on the grounds that it is vague, overbroad, unduly burdensome, oppressive and ambiguous, and not calculated to lead to the discovery of admissible evidence.

Without waiving the objections and to the extent this interrogatory is answerable, Applicant identifies the following: website, sales events, retailers, and other channels that will offer the products for sale.

**INTERROGATORY NO. 13:**

Identify all bases that Applicant shall rely upon for the Applicant's assertions in Affirmative Defenses No. 1 that:

- (a) Opposer's Registrations are directed to goods and/or services which are "distinguishable" from the Applicant's goods;
- (b) Opposer's Registrations are directed to channels of trade which are "distinguishable" from the Applicant's channels of trade; and
- (c) Opposer's Registrations are directed to consumers who are "distinguishable" from the Applicant's consumers.

**RESPONSE:**

Applicant objects to this interrogatory on the grounds that it is vague, overbroad, unduly burdensome, oppressive and ambiguous, and not calculated to lead to the discovery of admissible evidence.

Without waiving the objections and to the extent this interrogatory is answerable, Applicant answers the following:

- (a) Opposer offers clothing related to the motor sports industry. Applicant does not.
- (b) Opposer offers clothing related to the motor sports industry. Applicant does not
- (c) Opposer offers clothing related to the motor sports industry. Applicant does not

**INTERROGATORY NO. 14:**

Identify with particularity how, if at all, Applicant plans to market any of the products and/or services offered under the THORO name or mark to any consumer base or market.

**RESPONSE:**

Applicant objects to this interrogatory on the grounds that it is vague, overbroad, unduly burdensome, oppressive and ambiguous, and not calculated to lead to the discovery of admissible evidence.

Without waiving the objections and to the extent this interrogatory is answerable, Applicant identifies the following: website, social media, flyers, brochures, word of mouth, print advertisement, radio advertisement, television advertisement, and celebrity endorsements.

**INTERROGATORY NO. 15:**

Identify (a) all authorized licensees of the THORO marks; and (b) any assignments to which Applicant is a party that relate to the THORO marks.

**RESPONSE:**

Applicant objects to this interrogatory on the grounds that it is vague, overbroad, unduly burdensome, oppressive and ambiguous, and not calculated to lead to the discovery of admissible evidence.

Without waiving the objections and to the extent this interrogatory is answerable, Applicant identifies none.

**INTERROGATORY NO. 16:**

Identify those persons who had more than a clerical role in the answering of the foregoing interrogatories or in any search for documents in connection with said interrogatories or the Opposer's First Request for Production of Documents.

**RESPONSE:**

None.

Dated: December 18, 2014



As to objections,



Keesonga Gore  
Minott Gore, P.A.  
201 S. Biscayne Blvd.  
Suite 2800  
Miami, FL 33131  
Tel: 305.913.1333  
Fax: 305.675.0222  
[kjg@minottgore.com](mailto:kjg@minottgore.com)

*Attorneys for Applicant*

As to Answers:

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 18, 2014.



LeMar Xavier Lewis, Applicant

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent, via email, to Tara M. Vold, at trademark@vwiplaw.com, Vold & Williamson PLLC, 8521 Greensboro Drive, Suite 340, Mclean, VA 22102, on this 19th day of December, 2014.

/Keesonga Gore/  
Keesonga Gore

## Attachment 2

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

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<b>LeMans Corporation,</b>	:	
<b>Opposer,</b>	:	
<b>v.</b>	:	<b>Opposition No. 91214578</b>
	:	
<b>LaMar Xavier Lewis,</b>	:	
<b>Applicant.</b>	:	

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**APPLICANT’S RESPONSE TO  
OPPOSER’S FIRST SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 34 of the Federal Rules of Civil Procedure, Applicant LeMar Xavier Lewis, hereby responds to Opposer’s First Set of Requests for Production of Documents subject to the General Objections set forth below.

Applicant’s responses are made without waiving or intending to waive any objections as to relevancy, privilege, or admissibility of any information provided in responses to Opposer’s requests, in any subsequent proceeding or at the trial of this or any other action, on any ground. A partial answer to any request which has been objected to, in whole or in part, is not intended to be a waiver of the objection.

Production and inspection will take place at the offices of attorney Keesonga Gore, 201 S. Biscayne Blvd., Ste. 2800, Miami, FL 33131 or such other place as may be required as soon as reasonably possible, at a time and under conditions as agreed to between counsel.

**GENERAL OBJECTIONS**

Each of Applicant’s responses are subject to the following objections and conditions as if such objections and conditions were fully set forth in said response. The responses do not repeat each such objection or condition.

1. Applicant objects to the production of documents to the extent they seek information which is protected from disclosure under the attorney-client privilege or



work product immunity, or any other privilege, protection, or immunity applicable under governing law.

2. Applicant objects to the Opposer's "Definitions" and "Instructions" to the extent they purport to impose discovery obligations that differ from or exceed the discovery obligations imposed by the Trademark Rules of Practice and the Federal Rules of Civil Procedure.

3. Applicant objects to the production of "all" documents or the like to the extent that such requests are unreasonably broad, unduly burdensome, oppressive, vague, or ambiguous and to the extent they are unlimited as to time or seek information which is neither relevant to the subject matter of the pending action, nor reasonably calculated to lead to the discovery of relevant or admissible evidence. Unless otherwise indicated, Applicant will produce relevant documents after a comprehensive search of Applicant's business records.

4. Applicant objects to the production of documents to the extent that they seek information which is neither relevant to the issues raised in this opposition nor reasonably calculated to lead to the discovery of admissible evidence.

5. Applicant objects to the production of documents to the extent that they seek information in the custody of third parties over which Applicant does not exercise control.

6. Applicant objects to the production of documents to the extent Opposer's requests seek information which Applicant considers to be confidential or proprietary, including trade secrets or other confidential research, development or commercial terms, responses will be provided as warranted under terms of the Protective Order in this action.

7. To the extent that Applicant responds to a request for production of documents, this should not be construed as a representation or admission that the responses are admissible at trial.

8. Applicant responds to each of these requests for production of documents based upon information available as of the date hereof and reserve the right to supplement and amend their responses.

## RESPONSES TO REQUEST FOR PRODUCTION

Subject to the foregoing general objections, Applicant responds as follows:

### REQUEST NO. 1:

All documents and things which reflect, refer to, relate to, concern or support the claimed first use of the mark THORO by, or on behalf of, Applicant with regard to the products identified in Application Serial No. 85/956,925 on September 5, 2001.

#### RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

### REQUEST NO. 2:

All documents and things which reflect, refer to, relate to, concern or support the claimed continued use of the mark THORO by, or on behalf of, Applicant with regard to the products identified in Application Serial No. 85/956,925 as of June 11, 2013.

#### RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

### REQUEST NO. 3:

All documents and things which reflect, refer to, relate to, concern or support the claimed continued use of the THORO mark set forth in Registration No. 3, 206,498 ("the THORO Design") by, or on behalf of, Applicant for the products identified in Registration No. 3,206,498 as of October 21, 2012.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 4:

All documents and things which reflect, refer to, relate to evidence or concern the consumer understanding of, the consumer acceptance of, consumer reaction to, or the trademark availability of the designation THORO for Applicant's products identified in Serial No. 85/956,925.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 5:

All documents and things which reflect, refer to, relate to, evidence or concern any trademark use or use analogous to trademark use of THORO (including any composite terms or designs incorporating the designation "THORO") occurring on or before June 11, 2013 by or on behalf of Applicant, for any products and/or services offered by Applicant.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.



REQUEST NO. 6:

Representative documents and things which reflect, refer to, relate to or concern any trademark use or use analogous to trademark use of THORO (including any composite terms incorporating the designation "THORO"), occurring after June 11, 2013 by or on behalf of Applicant, for any products and/or services offered by Applicant.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 7:

All documents and things which reflect, refer to, relate to or evidence any searches conducted by or on behalf of Applicant concerning the designation THORO, and any opinions requested or received by Applicant regarding the right to use and/or to register the designation THORO in the United States in connection with the products and identified in Application Serial No. 85/956,925 or for any other products or services offered by Applicant.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 8:

Representative documents and things which reflect, refer to, relate to or concern advertising and/or promotional and/or marketing activity carried on or planned by Applicant in connection with any of Applicant's products and services, including those



products identified in application Serial No. 85/956,925, on which or in connection with which the designation "THORO" has been used or is intended to be used in any fashion by Applicant.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 9:

Representative documents and things which reflect, refer to, relate to or concern any and all trade shows, professional shows, professional meetings, seminars and conventions where Applicant, or another on Applicant's behalf, has promoted or offered for sale products and/or services, or is scheduled to promote or offer for sale products and/or services, which products and/or services are offered by Applicant or which products are covered by application Serial No. 85/956,925 and where such products and/or services are identified by the designation "THORO" (including any composite or stylized terms incorporating the designation "THORO").

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 10:

Representative documents sufficient to show the actual or projected annual dollar volume of Applicant's sales in the United States of each of the products identified in application Serial No. 85/956,925, if any, under the designation "THORO" (including

any composite or stylized terms incorporating the designation "THORO"), from the first sale of each such product to the present.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 11:

Representative documents sufficient to show the actual or projected annual advertising and promotional expenditures in the United States by or on behalf of Applicant relating to the promotion of any products and/or services offered by Applicant, including those products identified in application Serial No. 85/956,925 if any, under the designation "THORO" (including any composite or stylized terms incorporating the designation "THORO").

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 12:

Representative documents and things which reflect, refer to, relate to or evidence the date the designation "THORO" was first used by or on behalf of Applicant, for each product and/or service identified in response to Interrogatory No. 1.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 13:

All documents and things which reflect, refer to, relate to or evidence any and all surveys or reports of consumer understanding, recognition or perception of any mark or designation consisting of or incorporating the designation "THORO" or Opposer's THORO mark that Applicant has ever conducted, prepared or had conducted or prepared.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 14:

All documents and things which reflect, refer to, relate to or evidence any and all surveys, reports or opinions concerning consumer confusion or likelihood of confusion as between Applicant's use or proposed use of THORO for any goods and/or services and Opposer's THOR mark that Applicant has ever conducted, prepared or had conducted or prepared.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 15:

All documents and things which reflect, refer to, relate to or concern any information given in response to Opposer's Interrogatory No. 4 which requests, among



other things, the identification of all instances of actual confusion, mistake or deception known to Applicant as to the source or origin, a sponsorship or an association as between Applicant's use or proposed use of "THORO" and Opposer's use of THOR.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 16:

To the extent no produced in response to Request No. 15, all documents and things which reflect, refer to or concern any mail (including electronic mail), telephone calls, checks, orders, inquiries, payments, complaints, deliveries or other communications or materials which were received by Applicant but which were address to or which appeared to have been intended for Opposer or which relate to Opposer's products and/or services offered under Opposer's THOR Marks.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 17:

All documents and things which concern, reflect, refer to, relate to or mention Opposer's products and/or services offered under Opposer's THOR Marks.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 18:

Representative documents and things which reflect, refer to, relate to or concern any state or federal trademark applications filed by Applicant which would cover any marks consisting of or including the designation "THORO" for any of the products and/or services.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 19:

Representative documents and things which reflect, refer to, relate to or concern advertising agency or public relations firm activity, including correspondence, for any of the products and/or services of Applicant, including those products identified in application Serial No. 85/956,925, offered or to be offered under the designation "THORO."

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 20:



To the extent not provided in response to an earlier request, all documents and things which reflect, refer to, relate to or concern any information given in response to Opposer's Interrogatory No. 5.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 21:

To the extent not provided in response to an earlier request, documents sufficient to show all channels of trade through which Applicant's products and/services, offered or to be offered under the designation "THORO" move or will move and the marketing channels used or intended to be used by Applicant for such products and/or services.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 22:

Documents sufficient to show or reflect the nature of the purchasers to whom Applicant markets, or to whom Applicant intends to market any of its "THORO" products and/or services, including those products identified in application Serial No. 85/956,925.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 23:

To the extent not produced in response to an earlier request, a representative example of each different advertisement or promotional item presently distributed by or for Applicant, or which is planned to be distributed by or for Applicant, that mentions, identifies or describes any products and/or services offered by Applicant, including those identified in application Serial No. 85/956,925, and which are offered or are to be offered by Applicant under the designation "THORO."

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 24:

Representative documents and things which reflect, refer to, relate to or concern any licenses taken or given by Applicant or contemplated by Applicant (or any predecessor of Applicant) relating to the designation "THORO."

RESPONSE;

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 25:

Representative documents and thing which reflect, refer to, relate to or concern any assignments taken or given by Applicant (or any predecessor of Applicant) which relate to the designation "THORO."

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 26:

Any documents and things which reflect, refer to, relate to or concern any information given in response to Opposer's Interrogatory No. 9.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

REQUEST NO. 27:

Any documents and things which reflect, refer to, relate to or concern any information given in response to Opposer's Interrogatory No. 10.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

To the extent not otherwise produced, all documents mentioned or identified in response to Opposer's First Set of Interrogatories No. 1-16 to Applicant.

RESPONSE:

Applicant objects to this request on the grounds that it is vague, overbroad, unduly burdensome and oppressive, and not calculated to lead to the discovery of admissible evidence.

Without waiving any objections, all non-privileged responsive documents in Applicant's possession will be made available for inspection and copying.

Respectfully submitted,

/Keesonga Gore/

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201 S. Biscayne Blvd.  
Suite 2800  
Miami, FL 33131  
Tel: 305.913.1333  
Fax: 305.675.0222  
[kjg@minottgore.com](mailto:kjg@minottgore.com)

*Attorneys for Applicant*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent, via email, to Tara M. Vold, at trademark@vwiplaw.com, Vold & Williamson PLLC, 8521 Greensboro Drive, Suite 340, Mclean, VA 22102, on this 19th day of December, 2014.

/Keesonga Gore/  
Keesonga Gore



## Attachment 3

## WITNESS STATEMENT

Name: CHARLIE S. LEWIS JR

I, CHARLIE, swear or affirm:

That I personally know Lemar Lewis and he was actively marketing, selling and producing his Thoro mark on clothing, apparel and marketing materials in Fall 2001.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

10/30/2014  
Date

Charlie S. Lewis Jr.  
Name

WITNESS STATEMENT

Name: Rasheed Wiggins

I, Rasheed Wiggins, swear or affirm:

That I personally know Lemar Lewis and he was actively marketing, selling and producing his Thoro mark on clothing, apparel and marketing materials in Fall 2001.

I also purchased clothing in Fall 2001 from Lemar Lewis that contained the Thoro mark on the clothing.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

10/30/14  
Date

Rasheed Wiggins  
Name



# TRADEMARK

Trademarks Reports Administration  
Trademark Registrations

X Sign Out

Trademark Registration#: 7948

Mark Type: ☒ Trademark ☐ Service Mark ☐ Livestock ☐ Word Mark

Applicant Name: LeMar & Lewis  
Address Line 1: 3355 Lake Tiny Circle  
Address Line 2:  
City: Orlando State: FL Zip: 29687  
Country:

## Trademark Information

State Organized:  
Trademark Name: Thoro  
Mark Description: The word "Thoro" written with the "T" passing through the middle of the top portion of the letter "h" followed by the letters "o-r-o" all connected through cursive style script.  
Goods or Services:

Trademark Classes:

Date of 1st Use: Registered Date: 12/31/2002  
Date of 1st Use in SC: Expiration Date: 12/31/2007  
Last Renewal Date: Last Assignment Date:

Notes: Migrated Classes:--Trademark # 25

Save Scanning Certificate

## Payment Information

Method Amount Check #  
Cash ☒ 0.00

Total Charge: \$ 0.00  
Total Paid: \$ 0.00  
Balance: \$ 0.00

12/31/2002

## Trademark Logo

Browse...

THO 00003

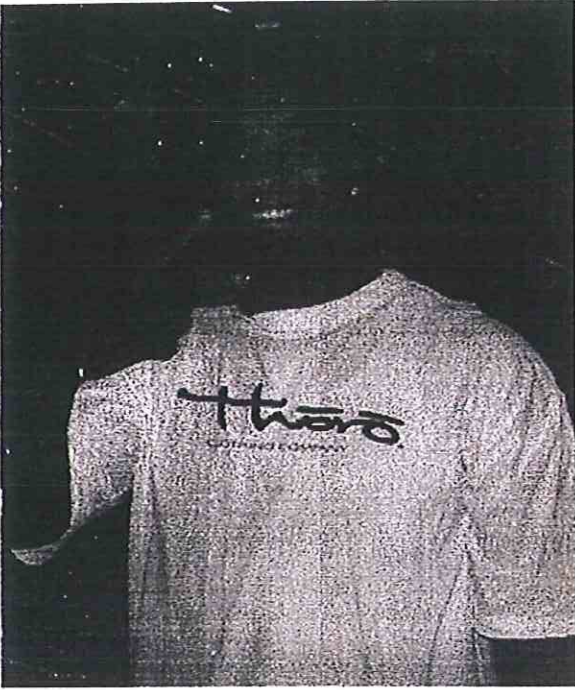


THO 00004

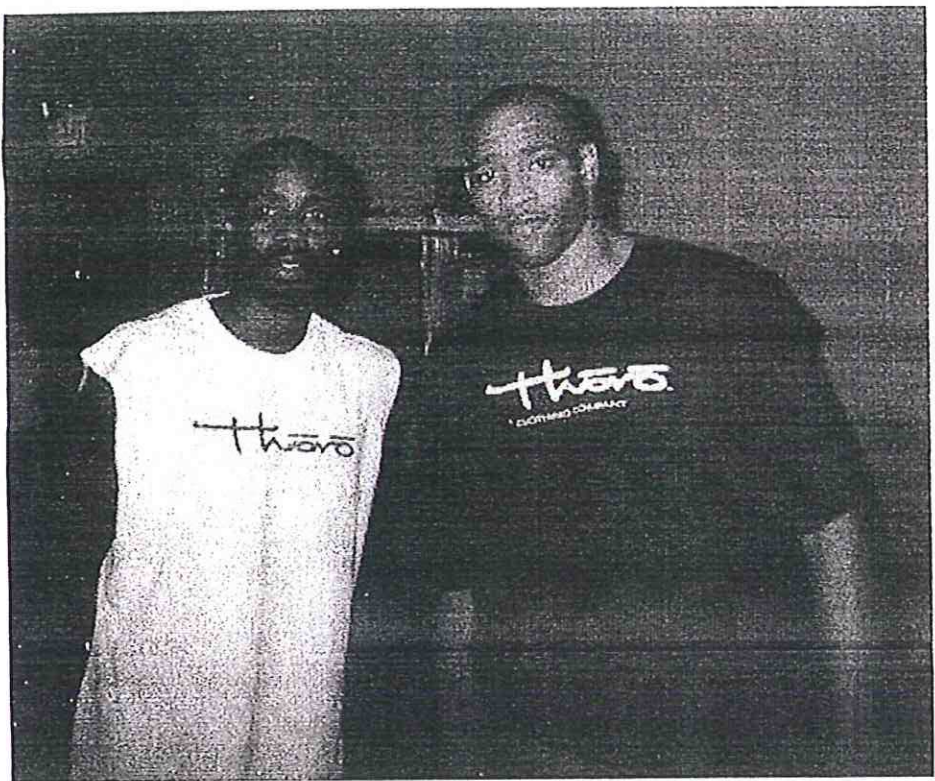




THO 00005



THO 00006



# thoro Clothing Company

## Fitted Hat

Retail Price  
\$21.99  
Wholesale  
\$9.00



100% Acrylic Flat & Billed  
Sizes: 7, 7 1/4, 7 1/2, 8

## Tank Top

Retail Price  
\$24.99  
Wholesale  
\$9.00



100% Pima Cotton, Embroidered Logo  
Sizes: L, XL, 2XL  
Colors - Black, White

## THORO CLOTHING COMPANY

WWW.ThoroWear.com | PH: 407.920.5806 |Lemar@ThoroHats.com

Mail To:  
333 W. TRADE ST.  
SUITE 210  
CHARLOTTE, NC. 28202



# thoro Clothing Company

Stuntin

**STUNTIN  
IS A  
HABIT...**

Retail Price  
\$24.99  
Wholesale  
\$9.00

Skull Head Shirt



Retail Price  
\$49.99  
Wholesale  
\$20.00

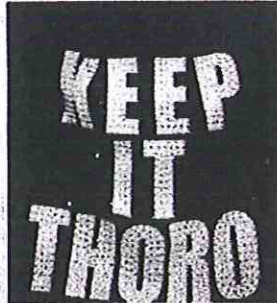
Signature Shirt



Retail Price  
\$24.99  
Wholesale  
\$9.00

100% Cotton Printed Logo  
Sizes L, XL, 2XL, 3XL

Keep It Thoro Rhinestone T-Shirt



Retail Price  
\$99.99  
Wholesale  
\$40.00

100% Cotton  
Swarovski Crystals  
Sizes L, XL, 2XL, 3XL

100% Cotton  
Sizes L, 2XL, 3XL,

Face Fear



Retail Price  
\$49.99  
Wholesale  
\$20.00

100% Cotton  
Sizes L, XL, 2XL, 3XL

100% Double Stitched Cotton  
Sizes L, 2XL, 3XL, 4XL

Keep It Thoro T-Shirt



Retail Price  
\$24.99  
Wholesale  
\$9.00

100% Cotton, Printed Logo  
Sizes L, XL, 2X, 3X

Order NOW! Call 407-920-5806

info@thorowear.com

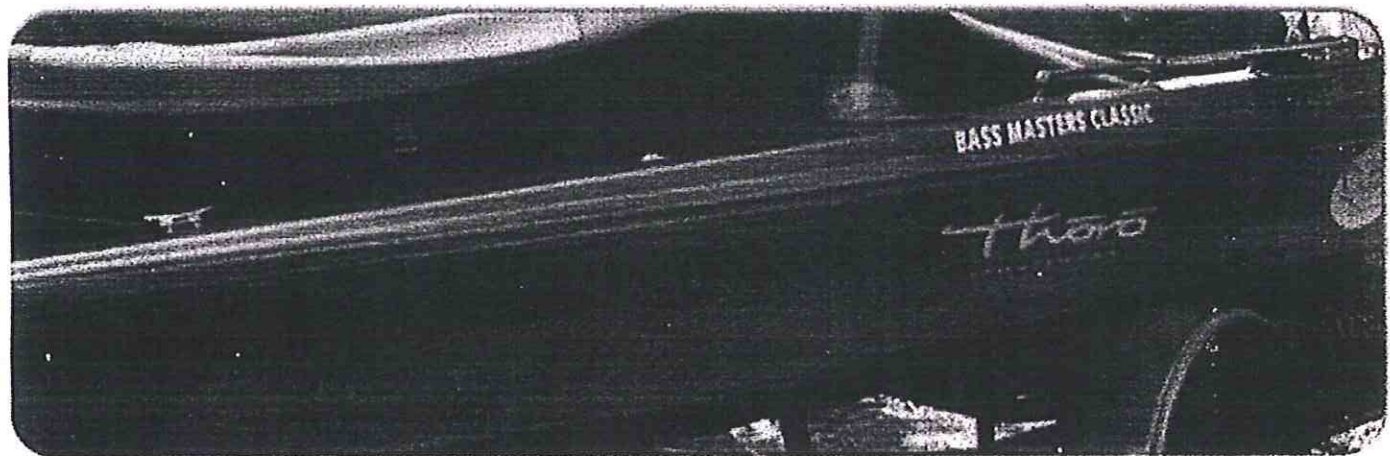
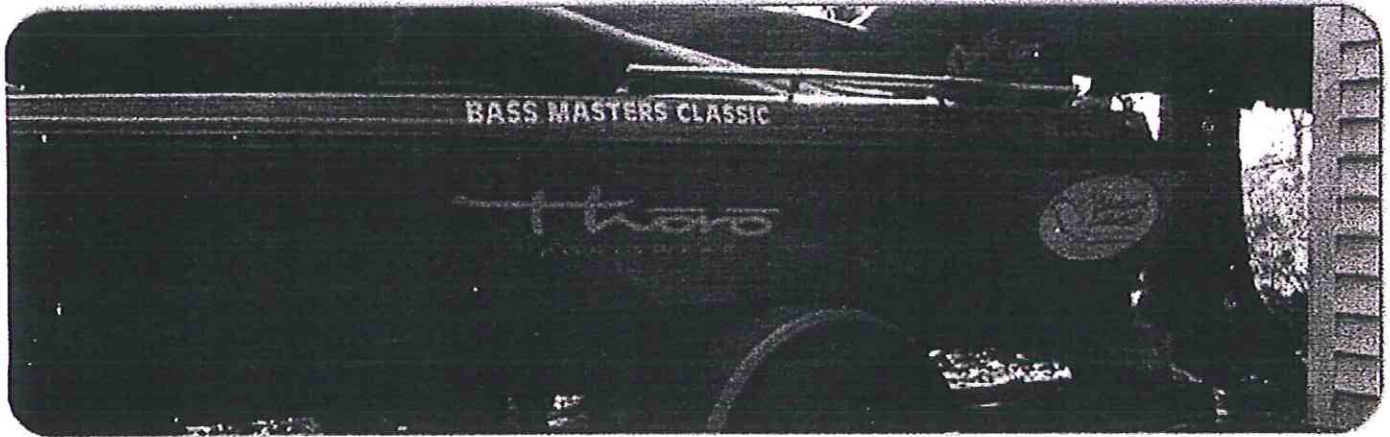
www.ThoroWear.com

**thoro** Clothing Company

Graphics Provided By: Nimbus-MediaGroup.com

THO 00010





THORO CLOTHING LTD. | CATALOG

# THORO CLOTHING LTD. | CATALOG

**Like** 0 **Tweet** 0 **Share** 0

Catalogs created for sales and distribution of new thoro clothing line.



RECENT  
WORK

< >



Stuntin



**STUNTIN**  
IS A  
HABIT

Retail Price  
\$24.99  
Wholesale  
\$9.00

Skull Head Shirt



Retail Price  
\$49.99  
Wholesale  
\$20.00

Signature :



CALENDAR

DECEMBER 2014

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20



thoro<sup>®</sup>

SPORTSWEAR

[www.thorSPORTSWEAR.com](http://www.thorSPORTSWEAR.com)



[thorSPORTSWEAR](#)



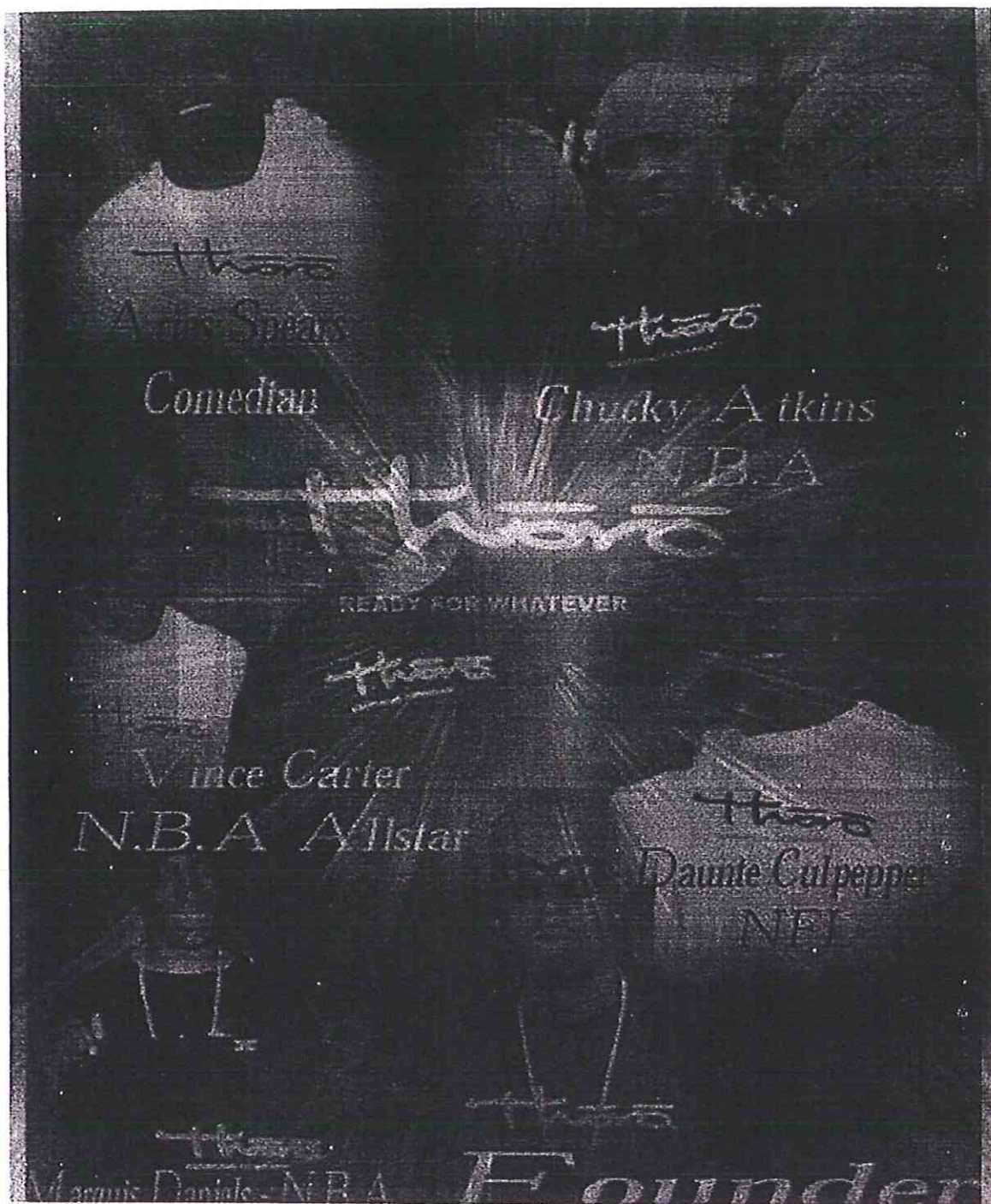
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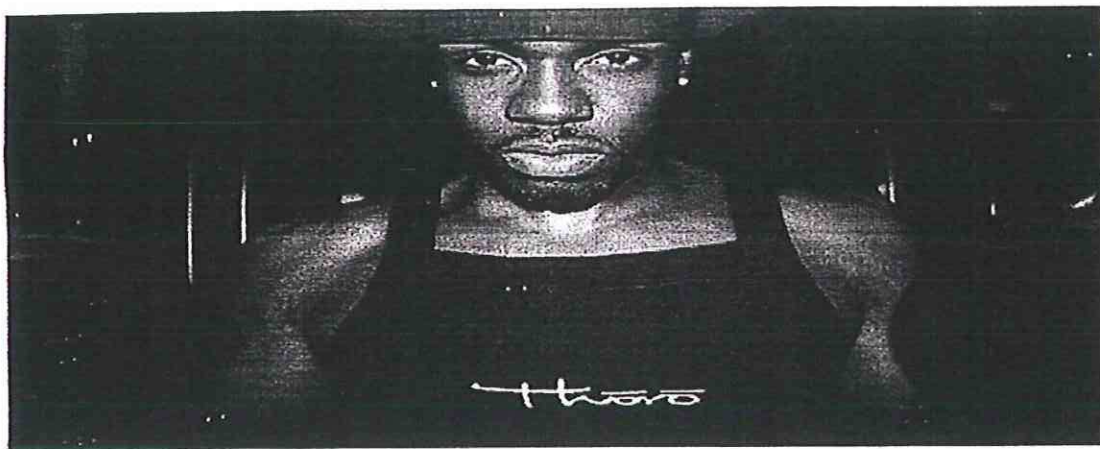


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THO 00015



THO 00016





THO 00017